

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

FRANK C. RICHARDS

Application for New License in the Amateur
Radio Service

To: Frank C. Richards

) WT Docket No. 07-109

) FCC File No. 0002666016

) **FILED/ACCEPTED**

) JUN 25 2007

Federal Communications Commission
Office of the Secretary

ENFORCEMENT BUREAU'S MOTION
TO DISMISS APPLICATION WITH PREJUDICE
AND
TERMINATE HEARING

1. The Enforcement Bureau ("Bureau"), pursuant to Section 1.221 of the Commission's Rules, 47 C.F.R. § 1.221, hereby requests the Presiding Administrative Law Judge to dismiss with prejudice the above-captioned application of Frank C. Richards and terminate this hearing proceeding. In support whereof, the following is shown.

2. On May 24, 2007, the Wireless Telecommunications Bureau, pursuant to delegated authority, released *Frank C. Richards*, Hearing Designation Order, DA 07-2184, (WTB, May 24, 2007) ("HDO"). The HDO designated the above-captioned application for hearing on issues relating to false certifications, misrepresentations, and lack of candor by Richards. In order to avail himself of the opportunity to be heard, the HDO, among other things, required Richards, in person or by his attorney, to file with the Commission, within 20 days of the mailing to him of the HDO, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified in the HDO. *See* HDO at ¶ 11.

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3. Subsequently, in *Frank C. Richards*, Order, FCC 07M-16 (ALJ, June 1, 2007), the Chief Administrative Law Judge assigned this proceeding to the Presiding Administrative Law Judge. The Chief Administrative Law Judge ordered a prehearing conference to be held in Washington, DC, on July 10, 2007.

4. A summary of the HDO was properly published in the Federal Register, thereby providing Richards with constructive notice of the HDO. *See* Notice, Federal Communications Commission, Frank C. Richards, Application for New License in the Amateur Radio Service, 72 Fed. Reg. 32664 (June 13, 2007). In addition, a copy of the HDO was timely mailed to Richards via Certified Mail – Return Receipt Requested on May 24, 2007, at the address specified by him in his application. The Wireless Telecommunications Bureau subsequently received the Return Receipt, indicating that Richards received the copy of the HDO.

5. Richards's notice of appearance was due 20 days from the mailing of the HDO. *See* HDO at ¶ 11. Since a copy of the HDO was mailed to Richards on May 24, 2007, and Richards had 20 days within which to file a notice of appearance, Richards was required to file his notice of appearance on or before June 13, 2007.

6. To date, Bureau counsel has not received a notice of appearance from Richards. In addition, a review of the Commission's Electronic Filing Comment System does not reveal any filing or correspondence from Richards. Furthermore, the Office of Administrative Judges has indicated to Bureau counsel that it has no record of having received any filing or correspondence from Richards in this proceeding.

7. Richards's application should be dismissed with prejudice, and this hearing should be terminated. Pursuant to Section 1.221(c) of the Commission's rules:

Where an applicant fails to file such a written appearance within the time specified, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for a good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute.

Additionally, paragraph 12 of the HDO states:

IT IS FURTHER ORDERED that, pursuant to Section 1.211(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), if Frank C. Richards fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.

8. In the instant case, despite having received notice of the HDO, it appears that Richards has not taken any steps to perfect his appearance at the hearing. In this regard, he apparently has not filed a timely written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified in the HDO, and has not shown good cause for failing to do so. In similar circumstances, the Presiding Administrative Law Judge has dismissed the pending application with prejudice for failure to prosecute.¹ Section 1.221(c) of the Commission's rules, the HDO, and applicable precedent compel the same treatment in the instant case.

9. For the foregoing reasons, Richards has failed to satisfy the requirements of Section 1.221. Accordingly, his captioned application should be dismissed with prejudice for failure to prosecute, the prehearing conference scheduled for July 10, 2007,

¹ See *Terry Keith Hammond*, Memorandum Opinion and Order, FCC 06M-37 (ALJ, Nov. 17, 2006) (dismissing renewal application with prejudice for failure to prosecute when no written appearance from the applicant was received despite Federal Register publication and documentation supporting that the applicant received a copy of a hearing designation order).

should be cancelled, and this proceeding should be terminated.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau

A handwritten signature in black ink, consisting of a large loop followed by a horizontal stroke and a small upward flick.

Gary Schonman, Special Counsel
Anjali K. Singh, Attorney Advisor
Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

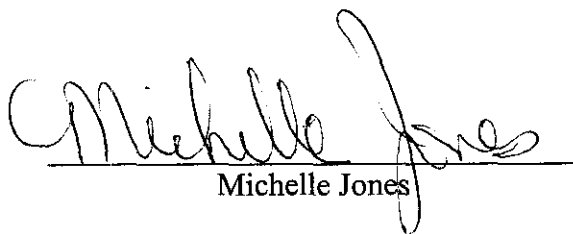
June 25, 2007

CERTIFICATE OF SERVICE

Michelle Jones, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 25 day of June 2007, sent by first class United States mail copies of the foregoing "Enforcement Bureau's Motion to Dismiss Application with Prejudice and Terminate Proceeding" to:

Frank C. Richards
1310 Hemmingford Rd.
Mooers, NY 12958

Administrative Law Judge Arthur I. Steinberg*
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, D.C. 20054


Michelle Jones

* Hand-Delivered